IN THE HIGH COURT OF BOM BAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION(MAIN) NO.36 OF 2007

Mrs. Sheryaz Michelle Lobo,
Through her power of attorney holder
Capt Lance Irwin Lobo
major, businessman,
R/o Khobravaddo, Calangute,
Bardez-Goa ... Applicant

versus

1. Mr. Ismail D'Souza alias
   Agnelo Ismail de Souza Machado,
   Major, service,
   R/o Betim, Bardez-Goa.

2. The State of Goa
   Through the Public Prosecutor
   High Court of Bombay at Goa
   Panaji, Goa. ... Respondents

Mr. Nigel Da Costa Frias, Advocate for the Applicant.

Mr. C. A. Ferreira, Public Prosecutor for the Respondent No.2.

Mr. S. G. Bhobe, Advocate for the Respondent No.1.

CORAM : N. A. BRITTO, J.

DATE : 29TH MARCH, 2007.

ORAL JUDGMENT

Heard. Rule.

2. By consent heard forthwith.

3. The applicant is accused no.2 in Criminal Case No.286/2004 on the file of the learned J.M.F.C., Mapusa. Accused No.1 in that case is her father. As far as the said accused no.1 is concerned, this Court in Criminal Miscellaneous Application No. 253/2006 by Order dated 24-1-2007 quashed and set aside the Order of the learned Additional Sessions Judge upholding the Order of the learned J.M.F.C. in issuing process against him under Section 409 I.P.C. Consequently, complaint against A-1 i.e. the father of the present applicant was dismissed. In dismissing the complaint, this Court had observed that the facts stated by the complainant which were reproduced in the said Order, had not disclosed any offence for the accused to be summoned. This Court had further observed that a conjoint reading of Sections 203 and 204 of the Code of Criminal Procedure Code, 1973 show that process has got to be issued after considering the statement on oath of the complainant and the witnesses and the result of the inquiry or investigation, if any, under Section 202 of the said Code. The recording of the statement on oath of the complainant under Section 200 Cr. P.C. is not an empty formality. It is commonly nicknamed as verification. To verify means to establish the truth. In other words, verification is done in order to ascertain as to what is pleaded by the complainant is true or not. It is with a view to separate chaff from the grain as many a times complaints do contain unfounded allegations and it is the duty of the Court to ensure that what is stated in the complaint is also stated by the complainant on oath and it is only then based on such statement that process

can be issued. The corollary of this would be that unless offences are disclosed from the statement on oath, no process can be issued only based on averments in the complaint. The complainant is bound to make a statement on oath as to how the offence was committed and how the accused persons are responsible therefor. After the statement on oath is recorded, a Magistrate is required to apply his judicial mind to the facts of the case and the law applicable thereto and find out what offence/s is made out, notwithstanding that the other party at that stage is unrepresented.

4. If the statement on oath made by the complainant was insufficient to issue process against A-1, the father of the present applicant the same is also insufficient for the present applicant to have been summoned for an offence under Section 409 I.P.C., as well.

5. Consequently, the application succeeds. Process issued against the applicant/A-2 is set aside and the complaint against her shall also stand dismissed.

N. A. BRITTO, J.

RD